

## CUMULATIVE DIGEST

### CH. 22 FORGERY

#### §22

**People v. Brown**, 2013 IL 114196 (No. 114196, 12/19/13)

1. Under 720 ILCS 5/17-3(a), the offense of forgery occurs where, with the intent to defraud, the defendant:

(1) makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another, at another time, with different provisions, or by authority of one who did not give such authority (720 ILCS 5/17-3(a)(1)),

(2) issues or delivers any document which is apparently capable of defrauding another with knowledge that it has been made or altered to make it apparently capable of defrauding (720 ILCS 5/17-3(a)(2)), or

(3) possesses any document which is apparently capable of defrauding with intent to issue or deliver it and knowing it to have been made or altered to make it apparently capable of defrauding (720 ILCS 5/17-3(a)(3)).

The gist of forgery is intent to defraud. Whether a forged document is apparently capable of defrauding depends on whether a reasonable person might be deceived into accepting it as genuine.

2. Here, defendant challenged her conviction under §17-3 (a)(1) for making or altering a document so that it was capable of defrauding another. Defendant, a police officer, presented a counterfeit check to her credit union after endorsing her own name. Defendant testified that the check came from her sister, who stated that she had settled a lawsuit and was distributing the proceeds to family members because she was dying.

The court concluded that under §17-3(a)(1), the point at which a check is “made or altered” depends on whether the check is genuine or counterfeit. If a check is counterfeit, forgery by “making or altering” under subsection (a)(1) is complete when the check is first created with the intent to defraud. A counterfeit check is capable of defrauding without the need for any endorsement.

By contrast, where a genuine check is endorsed in a way which makes it capable of defrauding, forgery by “making” or “altering” occurs at the point of endorsement. In other words, a false endorsement can render an otherwise valid check capable of defrauding and thereby constitute forgery under subsection (a)(1).

Because the check which defendant presented was counterfeit and therefore capable of defrauding when it was created, defendant did not make or alter the document within the meaning of §17-3(a)(1) when she endorsed it with her own name. Thus, defendant did not commit forgery under §17-3(a)(1) by endorsing the counterfeit check with her correct name.

3. The court rejected the State’s argument that the circumstantial evidence showed that defendant had actually made the counterfeit check and was therefore guilty of forgery under

§17-3(a)(1) without regard to her endorsement. The record contained no evidence that defendant actually made the check. In fact, the investigating officer testified that he discovered no evidence that defendant actually created the check or the settlement letter which accompanied it. “Proof of forgery by making ‘must be connected to the person charged or there is a failure of proof.’”

Because defendant did not make or alter the counterfeit check by endorsing it with her own name, and there was a complete failure of proof on the essential element that defendant created the counterfeit check, the conviction under §17-3(a)(1) must be reversed. Defendant’s conviction for attempted theft, which she did not challenge in the Supreme Court, was affirmed.

(Defendant was represented by Assistant Defender Benjamin Wolowski, Chicago.)

**People v. DeFilippo**, 235 Ill.2d 377, 919 N.E.2d 921 (2009)

1. The elements of forgery, as charged here, include: (1) a document apparently capable of defrauding another; (2) the making or altering of such document by one person in such a matter that it purports to be made by another; (3) knowledge by the defendant that the document has been thus made; (4) knowing delivery of the document; and (5) intent to defraud. Thus, “a document which ‘purports to have been made by another’ is properly an element of forgery where there is no allegation that the document otherwise purported to be made ‘at another time, or with different provisions, or by authority of one who did not give such authority.’”

2. A letter that was clearly made in defendant’s own name and under his authority, but which contained false information, was not a document made in a matter that purported to have been made by another person. Thus, defendant could not be convicted of forgery for writing a letter which sought to increase his eligibility for a pension and which allegedly contained inaccurate information concerning the date on which he had been deputized.

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